

STATE BOARD OF LAND COMMISSIONERS
Dirk Kempthorne, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, Controller
Marilyn Howard, Superintendent of Public Instruction

Final Minutes
Regular Land Board Meeting
March 12, 2002

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, March 12, 2002 in Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable Controller J. D. Williams
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Superintendent Howard joined the meeting at 9:10 a.m. Attorney General Alan Lance was absent from this meeting.

• **CONSENT AGENDA**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Secretary of State Cenarrusa to approve the Consent Agenda in its entirety. Controller Williams seconded the motion. The motion carried on a vote of 3-0, with Superintendent Howard and Attorney General Lance being absent for this vote.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – February 2002
- B. Bureau of Minerals Official Transactions – January 2002
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – January 2002
- D. Bureau of Real Estate, Easement Section, Official Transactions – January 2002
- E. Bureau of Range Management & Surface Leasing Official Transactions – February 2002
- F. Timber Sale Official Transactions – January 31, 2002 through February 27, 2002
- G. Timber Sale Activity Report

2. Approve Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved

A. Blue Creek Basin OSR	CR-2-0229	2,300 MBF
B. Frozen Flats	CR-3-0466	1,620 MBF
C. Ten	CR-5-0100	2,568 MBF

3. Issuance of Submerged Lands Lease B-5039 to Idaho Department of Fish and Game and Request for Mineral Withdrawal – Staffed by Scott Nichols, Chief, Bureau of Surface and Mineral Resources – **approved**

DEPARTMENT RECOMMENDATION: That the board direct the department to issue a Submerged Lands Lease to the Idaho Department of Fish and Game for a period of 25 years and withdraw the leased area from mineral entry as authorized by Title 47 Chapter 7 Idaho Code.

DISCUSSION: Governor Kempthorne pointed out that this agenda item pertains to a mining site that will be reclaimed as a recreational site for wildlife habitat.

BOARD ACTION: Approved.

4. Idaho Timber Supply Stabilization Act – Staffed by Ron Litz, Assistant Director, Forestry, Fire – **approved**

DEPARTMENT RECOMMENDATION: That the board suspend the “qualified bidder” requirement on all endowment land timber sales (except cedar pole sales) in the following areas of the state: (1) in the area of Idaho south of the Salmon River and (2) in the area of Idaho north of the St. Joe River.

DISCUSSION: Director Wiggins provided additional information for clarification of this agenda item. This item would waive the restrictions of the Timber Supply Stabilization Act for portions of the state. Specifically, it would waive those restrictions north of the St. Joe River and south of the Salmon River. Director Wiggins directed the board's attention to a map provided with this agenda item. He stated that the timber sales offered within the shaded areas would be open to all bidders and that the department still intends to offer 5% of its volume for sales within the non-shaded areas to non-qualified bidders, which is in accordance with the letter of the law. (Refer to map on Page 3.)

BOARD ACTION: Approved.

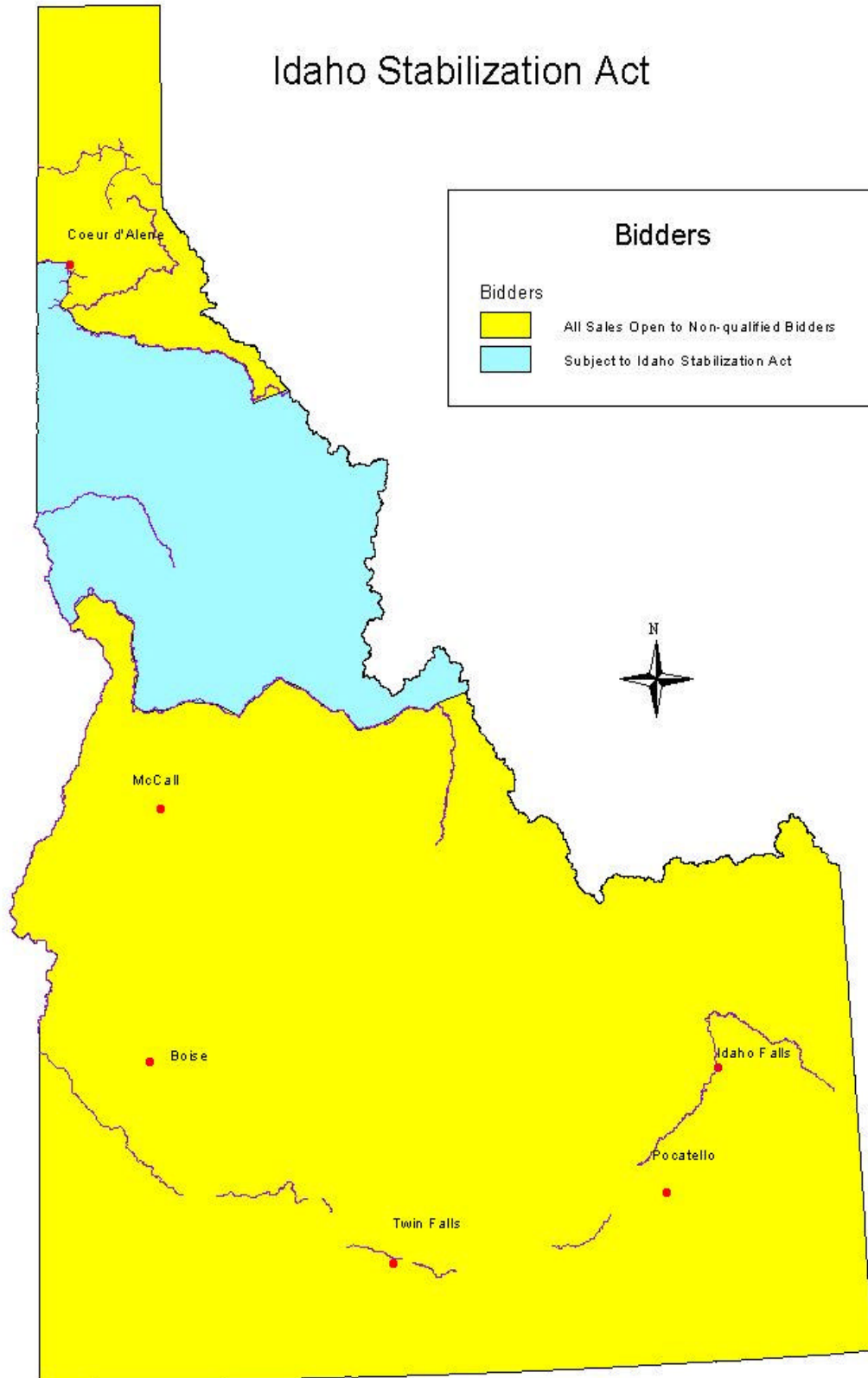
5. Request for Approval of Disclaimer of Interest to Betty Attebery and Jimmy and Ruby Thompson on 5.28 Acres of Accretion Land Along the Snake River in Payette County – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – **approved**

DEPARTMENT RECOMMENDATION: It is recommended that a disclaimer of interest be issued for this parcel of accretion land totaling 5.28 acres adjacent to the applicant's deeded property and being part of the former bed of the Snake River. This disclaimer of interest will be issued contingent upon the applicants granting to the State of Idaho a 25.00 foot wide unimproved public pedestrian easement for approximately 1400 feet along the ordinary high water mark of the current river channel. The applicants will also issue a disclaimer of interest to the State of Idaho for 0.57 of an acre of current riverbed that is included in their deed. The recommended fee is \$600.00.

BOARD ACTION: Approved.

6. Approval of Minutes – February 12, 2002 Regular Land Board Meeting – **approved**

Idaho Stabilization Act



- **REGULAR AGENDA**

- 7. Boise Foothills**

- A. *Audience with the Board* – Charles McDevitt, Chairman, Foothills Conservation Advisory Committee, City of Boise

AUDIENCE WITH THE BOARD

Mr. McDevitt. A number of years ago, Governor Kempthorne, as the then Mayor of the City of Boise, approved a Ridge to Rivers Trail System within the City of Boise. That System has developed into sixty miles of trails in the Boise Foothills. The Ridge to Rivers Trail System has become the Foothills adjunct to the greenbelt. Following that, a Foothills study was initiated and, under a special statute, a serial levy was brought to the citizens of Boise. The serial levy permits municipalities for a period of two years, with a fifty percent vote of the citizens, to impose a real property tax upon tax within the jurisdiction of that municipality.

Last year Boise had one of the largest turnouts of voters in a municipal election in recent years. Sixty percent of the voters in Boise City imposed upon themselves a serial levy to raise \$10 million to facilitate providing and protecting open space and pathways into the Foothills. Concurrently, and for a period of years, meetings have been held with the Department of Lands, the Bureau of Land Management, the United States Forest Service and the Department of Fish and Game.

In 1999 those meetings resulted in a Memorandum of Understanding that brought about an agreement between the Forest Service, the Bureau of Land Management, the City of Boise, Ada County and Fish and Game to commonly manage the properties that they own in the Boise Foothills. There are approximately 80,000 acres in the Foothills, with 42,000 acres in private hands and 38,000 acres in public hands.

Also as a result of those meetings, the Bureau of Land Management indicated that, if the State of Idaho was willing, they would entertain exchanges with some of the state lands that would provide access routes to the Foothills so that the citizens of Boise, by development, would not be cut off from the massive federal land that sits above the private ground and also to attempt to attain, through conservation easements and protection, the trail system that exists. About 60% of those trails are there at sufferance. Private landowners have said that the trails can be used but that use could be taken away at any time.

The desire is to have a greenbelt to the Foothills that ties into the greenbelt system. Mr. McDevitt stated that he is asking the State Land Board to approve and direct the Department of Lands to enter into an MOU to see if there are any possible land exchanges. It is understood that the Land Board has a duty to obtain fair market value for those lands in the Foothills. By taking this step, the Land Board is not approving any transactions. Any land exchange would come back to the Land Board for approval.

The City of Boise has passed a resolution asking Congressional leadership to also support this effort and to help obtain funds for the BLM. Boise City, through its serial levy, is prepared to do some of the necessary footwork, such as endangered species studies and other studies essential for the federal government to enter into an exchange.

Governor Kempthorne thanked Justice McDevitt for his involvement with this effort. Controller Williams also thanked Justice McDevitt. Controller Williams asked if it was possible to allow consideration of other properties, such as property that the city or county may not need in exchange for some of the Foothills property. Justice McDevitt stated that one of the problems being encountered is their ability to leverage. The BLM is willing to trade at value for value with the State of Idaho. The city and county have the same mandate that the Land Board has and

that is to get fair market value for their property. Within those constraints, leverage disappears. But those options are being considered.

Director Wiggins commented that it is the department's recommendation that the board direct the department to enter into an MOU with the Bureau of Land Management, recognizing that the department would not be restricted in its dealings of developing specific exchange packages. In particular, the Forest Service might be an alternative if the department is seeking productive timberland in other parts of the state.

B. Consideration of Exchange of State Lands in the Boise Foothills

DEPARTMENT RECOMMENDATION: That the board direct the department to develop an MOU with BLM to initiate the process.

BOARD ACTION: A motion was made by Secretary of State Cenarrusa to accept the department's recommendation. Controller Williams seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

8. Endowment Fund Investment Board Manager's Report [EFIB] – Presented by Charles G. Saums, Manager of Investments, EFIB, and Susan Tamagni, Sutro & Company

AUDIENCE WITH THE BOARD

Susan Tamagni. Ms. Tamagni provided a quarterly report for the Land Board. The fourth quarter ended December 31, 2001. Listed below are some highlights from the report:

- **Endowment Fund Investment Board [EFIB] Total Fund Composite** represents both equity and fixed. The Total Fund performance was up 8.48 versus a benchmark of 10.67. The Fund was in line as mandated by the Variable Spending Policy. As indicated by both calendar year 2001 and inception-to-date, the EFIB Total Fund outperformed both of its indices.
- **Equity only** was up 3.42. It beat both the equity benchmark and the S&P 500.
- **Fixed income** was down .27 versus the Lehman Brothers Intermediate Government Corporate, which is the benchmark for fixed income. Being down .08 is a very negligible dispersion. As evidenced by the calendar year, the internal managers are performing at 9.01, which is slightly ahead of their index.
- **Allocation of assets by style** is worth noting to the extent that the portfolio was rebalanced to the original allocations, as per mandate to rebalance on an annual basis. Rebalancing occurred on January 7 so the numbers have changed since the end of the quarter. The original asset allocation has been approximated at this point.
- **Large cap growth** has garnered a great deal of concern. It was the area most dramatically affected by the decline in technology stocks. Funds all over the country suffered the consequences of the tech meltdown. As evidence of the counter cyclicity that exists in the market, Ms. Tamagni pointed out that Trainor-Wortham, one of Fund's large cap growth managers, returned 26% for the quarter ending December 31, 2001. Ms. Tamagni stated not only was that exceptional performance, but it was especially exceptional given that the benchmark returned 15.14%. Trainor-Wortham was a full eleven percentage points ahead of their benchmark. Ms. Tamagni commented this is evidence that counter cyclicity works and serves as proof of why there is tremendous value in diversification in asset management.

DISCUSSION: Controller Williams asked Ms. Tamagni if, in the future, it would be possible to receive an updated report so that the board has an accurate reflection of the fund to date.

Controller Williams went on to ask about active versus passive management and the costs associated with active management. In looking at the EFIB budget, active management costs are not outlined. Mr. Saums responded that the EFIB has a continuous appropriation for those types of expenses so it does not show directly on the budget. Active management is about 43 basis points. Passive management is about 3 basis points. Controller Williams asked Mr. Saums if he prepares a report for the EFIB listing those fees. Mr. Saums stated that the Endowment Board does receive the fee information on an annual basis and that the Land Board would be provided a copy of the report in the future. Controller Williams commented that 43 basis points would be about one-half of a percent. On an \$800 million portfolio, that would equal between \$3 million and \$4 million.

Controller Williams stated he would like to see a report from the time the Fund entered into active management until now. Ms. Tamagni stated it would not be easy to develop a report to the extent that the cash flows were timed in such a manner as to allow for the liquidation of the fixed income portion of the portfolio. While the first managers may have been funded early in the first quarter, most of the managers were not truly funded until December of that year. Ms. Tamagni stated that it becomes somewhat difficult to get a true idea because a manager can not be judged on performance for the quarter when he has only been receiving money in sort of an installment fashion, and an irregular one at that. Ms. Tamagni commented that the information being sought by Controller Williams is contained within some of Sutro & Co.'s previous presentations and she would be happy to go through those reports with Controller Williams, if he wished to do so. Controller Williams agreed that at the beginning it would be hard to judge, but at some point it would be nice to see. If the Fund had been in passive management, what would it have earned and what would the management cost have been? What was the return for active management compared to passive?

Ms. Tamagni stated that on a short-term basis those comparisons are sometimes misleading. There is a fallacy regarding the expense of passive management. Certainly if the Land Board chose to simply invest in 70% S&P, which is an index that is fully replicable because everything is very liquid and very large, then it could probably be run for 5 basis points and some 35 basis points in aggregate would be saved. But that would not subscribe to the diversification spelled out in the Variable Spending Policy. So you would need to go out and find passive indices to correspond to each of the chosen management styles. The problem with that, and the fallacy contained in that, is that there are very few of these types of passive funds with any track record and they are not inexpensive. Unlike the S&P, there is tremendous sampling error involved. Some run as much as 95 basis points. It would be difficult.

Ms. Tamagni stated she would not be able to offer any long term track record for many of the funds. Controller Williams stated that while Ms. Tamagni's comments are well taken, he would like to see the numbers. In difficult financial times, everything you do is scrutinized and you have to ask if it is worth the cost. Ms. Tamagni stated she would be happy to provide the requested information.

No action was taken on this agenda item.

9. WestRock – *Presented by Kent Nelson, Deputy Attorney General, and Jay Biladeau, Assistant Director, Lands, Minerals, Range, IDL*

DEPARTMENT RECOMMENDATION: That the board direct the Department of Lands and legal counsel to commence discussions with WestRock along the lines set out and to prepare to the fullest extent possible a leasing document for consideration by the board, as well as an outline of the leasing issues that arise from these discussions that will be relevant for the board's final decision on WestRock's lease proposal.

DISCUSSION: Kent Nelson, Deputy Attorney General, provided background information. At this point, Mr. Nelson, as counsel for the department and the board, has been working with the

department on potential leasing terms for consideration by the board as part of the board's overall decision-making process for whether or not to enter into a lease with the WestRock entities.

The focus has been on three basic concepts: (1) the maximization of the long-term return to the Endowment and the Endowment beneficiaries; (2) protecting the income and assets of the Endowment in the event of a financial failure of this venture, which is a risk that is inherent in any sort of a development operation such as this and (3) requiring adequate assurance and insurance to protect the income and assets of the Endowment from operations as a result of the lease – not only personal injury but injury to property and potential injury to the environment. This is being done within the context of the proposed WestRock project, which encompasses not only a significant acreage of state property but an equally large acreage of privately-owned property. In the overall development is a combined development of those projects and the focus is on maintaining the three basic concepts with respect to the operations and proposed operations on the state lands and, at the same time, recognizing that there may very well be other state and local government agencies who will have their say in the overall WestRock development and whether it proceeds and how it proceeds.

Mr. Nelson prepared a list of leasing issues. He stated that the list is not an all-encompassing list. It is a list of basic terms. At this point, the idea and the request from the department and from Mr. Nelson, as counsel to the board, is that the board give instruction to proceed with discussions with WestRock on specific leasing terms within the parameters of the memorandum, once again recognizing and stressing that this is not a decision point for whether to lease or not to lease to WestRock. That decision will be made later.

Mr. Nelson provided one point of clarification with respect to rent. The rent schedule incorporates the concept of a base rent and then a percentage rent. It does not call for base rent plus a percentage. The base rent is simply a minimum figure that is calculated along with percentage rent. It is not an additional figure in addition to the percentage rent.

DISCUSSION: Governor Kempthorne commented that there are three Memorandums of Understanding – one with the Department of Fish and Game, one with the Department of Parks and Recreation and one with the Department of Transportation. While the lease would not reflect the terms of the MOUs, he asked how the board can utilize the lease as a lever that assures that the MOUs will be followed. Or, in the event that the terms of the MOU are not met, what control does the board have? Mr. Nelson stated he has not been specifically involved in the meetings with respect to WestRock and the state agencies. However, he does have some familiarity with the MOUs.

At this point, Mr. Nelson stated he is not in a position to say that the lease will not reflect any of the points addressed in the MOUs. It depends on how those MOUs dovetail into how the lease deals with the board's fulfilling its fiduciary duty under essentially the largest trust in the state. To the extent possible, Mr. Nelson stated he would try to dovetail those types of terms within the lease, if they fall within the parameters of the board's jurisdiction over its endowment assets. Beyond that, Mr. Nelson stated he would tend to look toward the quid pro quo that is inherent in any contract. He stated he would not be able to say for certain until he has a better handle on precisely where those MOUs are heading and that is something he would look at in relation to discussions with WestRock.

Governor Kempthorne posed another question with regard to bonding. Hypothetically speaking, if this project proceeds with construction of the ski lift and then, for whatever reason, the company determines that it can not finish the project, is there any assurance that the state will be in a position to choose to either finish the ski lift or remove the construction and restore the land? Mr. Nelson stated that this question is answered by the two tiers of protection anticipated to be built into the lease. The state should have the ability to make that decision based upon the facts at the time. It would be a business decision whether it would make sense in the event of a failure of this project for the state to attempt to go in and complete the ski lift in some fashion and operate it or

in the alternative, the state would have the ability to have the ski lift removed and to reclaim the property. It is anticipated both avenues would be available to the board.

Controller Williams stated even though many of these agreements with agencies may not be directly within the purview of the trust, they all go to the issue of viability of the project and, as such, they are things that have to be taken into consideration, particularly in regard to DEQ and the impact on Cascade Reservoir. If this project is successful, it will have an incredible impact on the community from an economic viewpoint and also on the whole State of Idaho. But, at the same time, if it is not successful, there can be a lot of ramifications – particularly on the lake, which has problems now. It has been interesting to look at Total Maximum Daily Load (TMDL) reports on the phosphorus and nitrogen that is causing the algae problems and other problems in the lake and how those levels are going down. A lot of efforts are being made and that is critical.

Controller Williams commented that he has always looked at this project from a financial viewpoint. But Director Steve Allred, DEQ, got his attention when he testified that the lake would be improved and that, as long as WestRock does what they say they are going to do, there would not be any degradation to the lake and there could be possible improvement to the lake because of the sewer line and other items.

Controller Williams stated there are two issues in this: protection of the trust to make sure that the trust is not going to have any liability if there is a problem and to make sure that there is no problem with the lake.

Controller Williams commented that he does not know if the board will be able to put together an agreement that will work – an agreement that will protect all of the interests plus give WestRock a fighting chance for success – but he feels it is time to see if it can be done. There are some things that he feels would be necessary. One idea is that the board does not lease all of the property. He suggests that the board keep out a piece of ground that in 20 or 30 years would be very valuable should WestRock succeed. Another idea is replacing the timber ground. Controller Williams agrees that there needs to be flexibility and there may be other alternatives.

Dr. Howard commented that the discussions being held are a good exercise for us as a state to think about all of the components that go into a project such as this and all of the people who care about it from the various points of view. The issue of due diligence means making sure that we are tracking each one of those elements down to its basics to see whether or not they are being addressed adequately. We also look to the people who are proposing the project to see if this is a group that is operating in a credible way and we look at all of the things that have been underway these last months. Dr. Howard stated she feels comfortable that the board can take the next step.

Governor Kempthorne acknowledged the presence of Valley County officials in the audience. He thanked them for attending the meeting and for their interest in this project.

BOARD ACTION: A motion was made by Secretary of State Cenarrusa to accept the department's recommendation. Controller Williams seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

A motion was made by Controller Williams to resolve into Executive Session at 9:50 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

- **EXECUTIVE SESSION**

- A. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation** [Idaho Code § 67-2345(1)(f)]

- B. To Consider Personnel Matters** [Idaho Code § 67-2345(1)(b)]

A motion was made by Secretary of State Cenarrusa to resolve back into regular session at 10:25 a.m. Controller Williams seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote. No actions were taken by the board during the Executive Session.

There being no further business to come before the board, the meeting adjourned at 10:25 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Pete T. Cenarrusa

Pete T. Cenarrusa
Secretary of State

/s/ Winston A Wiggins

Winston A Wiggins
Director

<p>The above-listed final minutes were approved by the State Board of Land Commissioners at the April 23, 2002 regular Land Board meeting.</p>
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